

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION**

**TRINETICS INTERNATIONAL, INC.,)
And TRI-HAM, LLC)**

Plaintiffs,)

v.)

Case No.: 5:12-cv-02810-CLS

**DHL AIR & OCEAN GENERAL)
TRANSPORT, FORWARDING AND)
CUSTOMS CLEARANCE, LLC, d/b/a)
DHL GLOBAL FORWARDING IRAQ,)
and DHL GLOBAL FORWARDING)
(AE),)**

Defendants.)

PLAINTIFFS' MOTION FOR ALTERNATIVE MEANS OF SERVICE

COME NOW, Plaintiffs Trinetics International, Inc. ("Trinetics") and Tri-Ham, LLC ("Tri-Ham") (collectively, "Plaintiffs"), by and through their undersigned counsel, and file this Motion for Alternative Means of Service and in support thereof, say:

1. On August 27, 2012 the Plaintiffs filed the above-captioned lawsuit against Defendants DHL Air & Ocean General Transport, Forwarding and Customs Clearance, LLC, d/b/a DHL Global Forwarding Iraq ("DHL Iraq") and DHL Global Forwarding (AE) ("DHL AE").
2. DHL Iraq is, upon information and belief, a limited liability company organized under the laws of Iraq, with its principal place of business in Basra, Iraq. Both companies have done business in the State of Alabama by virtue of their transaction business with Tri-Ham and through it, Trinetics.

3. Plaintiffs' complaint seeks recovery against DHL Iraq for breach of contract and account stated in the approximate amount of \$1,396,000.00 for work performed by Tri-Ham and Trinetics for DHL Iraq.
4. Pursuant to Fed.R.Civ.P. 4(h)(2) a foreign corporation which is subject to suit under a common name may be served in any manner authorized under Fed.R.Civ.P. 4(f) for individuals in a foreign country except for personal delivery. See, eg. *Prewitt Enterprises, Inc. vs. OPEC*, 353 F.3d 916, 922 (11th Cir. 2003). Iraq is not a member of the Hague Service Convention and there is no international agreement which stipulates the appropriate means of service.
5. Plaintiff previously attempted to serve DHL Iraq by certified mail as allowed by Fed.R.Civ.P. 4(f)(2)(C)(ii) but has been unable to perfect such service.
6. Rule 4(f)(3) of the Federal Rules of Civil Procedure allows for service of process upon a foreign corporation "by other means not prohibited by international agreement, as the court orders." Moreover, Fed.R.Civ.P. 4(h)(2) provides that a foreign corporation, partnership or association may be served in "any manner prescribed by Rule 4(f) for serving an individual, except personal delivery under (f)(2)(C)(i)."
7. One such means of perfecting service of process upon a foreign defendant is by the use of email so long as the method crafted is reasonably calculated to inform the interested parties of the pendency of the action and give them the opportunity to defend. See, eg. *Rios Properties, Inc. v. Rio International Interlink*, 284 F. 3d 1007 (9th Cir. 2002); *Williams vs. Advertising Sex LLC et. al.* 231 F.R.D. 483 (N.D. W. Va. 2005). Furthermore, the procedure should utilize an online delivery service that generates a digitally signed proof of delivery once the document has been received by the target

email. See, *Liberty Media Holdings, LLC vs. Sheng Gan*, 2012 WL 122862 at 4 (D. Colo. 2012). However, a party may petition for authorization to serve process upon a foreign party by email without first exhausting service under the other provisions of Rule 4(f) so long as the method comports with due process. *Williams*, 231 F.R.D. at 487.

8. Upon information and belief, DP DHL is comprised of four separate divisions including the Global Forwarding Freight division. See, website: http://www.iq.dhl.com/en/about_us/company_portrait.html#organization last visited November 12, 2012. Underneath this division is a network of agents including Air & Ocean General Transport Forwarding & Customs Clearance a/k/a DHL Global Forwarding Iraq. See DHL Global Forwarding Agent List attached as “Exhibit A” at 7-8.
9. Prior to filing this case, Plaintiff received multiple emails from DHL. One such email is from Graham Hunter of DHL Global Forwarding dated April 2, 2012 wherein he states “I confirm that we will make a payment of minimum USD 299000 shortly. Payment schedule will be notified in due course. We have a further amount of approx. USD 1 million to pay for which I will also advise the payment schedule.” See G. Hunter Email attached as “Exhibit B.”¹ Thereafter, Plaintiffs have received email correspondence from Julian Ranzato whose email address is Julian.Ranzato@dhl.com purporting to act on behalf of DHL Global Forwarding Iraq. In response to these emails, counsel for Plaintiff sent both Mr. Hunter and Mr. Ranzato a copy of the Plaintiff’s lawsuit which it intended to file. See email of K. Heard dated May 23, 2012 Attached as “Exhibit C.” Thereafter in June of 2012, Plaintiffs were supplied an email from Wolfgang Pordzik whose email is wolfgang.pordzik@DPDHL-USA.com also purporting to act on behalf of DHL Global

¹ Mr. Hunter’s email address is Graham Hunter (DHL AE) <Graham.Hunter@dhl.com>. While DHL AE has made an appearance in this case, clearly Mr. Hunter is purporting to act on behalf of DHL Iraq.

Forwarding Iraq. In the email from Mr. Pordzik, which was directed to a staff member of Senator Shelby, Pordzik states “Let me assure you that DHL has and will fulfill all contractual obligations, yet we expect....a single point of contact for all payments. See Pordzik Email attached as “Exhibit D.” In an effort to respond to this concern, counsel for the Plaintiffs sent Mr. Pordzik an email indicating that there is a single point of contact for payment that can be made to the Plaintiffs. See email of K. Heard attached as “Exhibit E.”

10. This email traffic indicates that DHL Iraq is aware of the lawsuit yet has refused to come forward and present any defenses it may have to the claims. For this reason, Plaintiff seeks authority to perfect service of process upon DHL Iraq via email service. To accomplish this Plaintiff proposes that it be allowed to serve a copy of the Complaint upon DHL Iraq via email upon the following individuals: Graham Hunter at Graham.Hunter@dhl.com; Julian Ranzato at Julian.Ranzato@dhl.com; and Wolfgang Pordzik at wolgang.pordzik@DPDHL-USA.com as each of these individuals have acted on behalf of DHL Iraq. In addition Plaintiff will also serve a copy of the complaint upon Najeeb Kassab who was the General Operations Manager IQ Air and Ocean General Transport Forwarding DHL global Forwarding (Iraq) whose email address is najeeb.kassab@dhl.com.² Plaintiff further submits that service via email can be crafted in such a way that it will apprise DHL Iraq of the pendency of the action and afford it the opportunity to defend. In the event this Court allows for such service, Plaintiffs will utilize RPost Registered Email (www.rpost.com) or similar service which provides an electronic receipt of email establishing delivery.

² See email thread attached as “Exhibit F” which identifies Najeeb Kassab as the General Operations Manager IQ Air and Ocean General Transport Forwarding DHL global Forwarding (Iraq).

WHEREFORE PREMISES CONSIDERED, Plaintiffs respectfully request that this Court entered an Order allowing service of process upon DHL Global Forwarding Iraq via email and further requests that it be granted such further and additional relief to which it is justly entitled.

Respectfully submitted this the 14th day of November, 2012,

/s/ Kevin D. Heard

Kevin D. Heard

Adam C. Dauro

Attorneys for Plaintiffs

Of Counsel:

HEARD ARY, LLC

307 Clinton Ave. W, Ste. 310

Huntsville, Alabama 35801

Tel: (256) 535-0817

Fax: (256) 535-0818

kheard@heardlaw.com

adauro@heardlaw.com

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the above and foregoing pleading upon the following by U.S. Mail, CM/ECF filing system and/or electronic mail on this the 14th day of November, 2012,

DHL Air & Ocean General Transport
Forwarding and Customs Clearance, LLC
d/b/a DHL Global Forwarding Iraq
301/Bldg. No. 8
Mnawi Basha
Basra, Iraq

DHL Global Forwarding (AE)
c/o John F Whitaker, Atty.
2011 4th Avenue North
Birmingham, AL 35203

Graham Hunter
Graham.Hunter@dhl.com

Julian Ranzato
Julian.Ranzato@dhl.com

Wolfgang Pordzik
wolfgang.pordzik@DPDHL-USA.com

Najeeb Kassab
najeeb.kassab@dhl.com

/s/ Kevin D. Heard

Kevin D. Heard